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3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

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6 ALFREDO PUENTES,

7 v.

Plaintiff,

8 AITOR NARVAZIA, *et al.*,

9 Defendants.

Case No. 3:19-cv-00600-MMD-CSD

10 ORDER

11 I. **BACKGROUND**

12 On August 31, 2020, the Court issued a screening order dismissing Plaintiff's  
13 Complaint in its entirety, without prejudice and with leave to amend within 30 days. (ECF  
14 No. 7 at 7-8.) Plaintiff filed his First Amended Complaint on September 28, 2020. (ECF  
15 No. 9.) On June 21, 2021, the Court issued a screening order and dismissed the First  
16 Amended Complaint without prejudice with leave to amend within 30 days. (ECF No. 10  
17 at 9-10.) Plaintiff submitted a Second Amended Complaint on July 19, 2021. (ECF No.  
18 11.)

19 On October 28, 2021, the Court issued a screening order dismissing Count 1,  
20 without prejudice and with leave to amend, to identify the name of the Doe Defendant  
21 who made a deliberate decision not to provide Plaintiff with medication. (ECF No. 12 at  
22 8-10.) The Court gave Plaintiff until January 25, 2022, to identify the Doe Defendant and  
23 file a Third Amended Complaint. (*Id.* at 10.) The Court informed Plaintiff that one possible  
24 method he could use to obtain the identity of the Doe Defendant was Federal Rule of Civil  
25 Procedure 45. (*Id.* at 9.) The Court warned that, if Plaintiff did not file a Third Amended  
26 Complaint identifying the name of the Doe Defendant in Count 1, the Court would dismiss  
27 the action with prejudice and close the case. (*Id.* at 11.) After Plaintiff failed to file a Third  
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1 Amended Complaint or otherwise respond, the Court dismissed the case with prejudice  
2 and closed the case on February 2, 2022. (ECF No. 14.)

3 On March 2, 2022, Plaintiff filed a motion for reconsideration under either Federal  
4 Rule of Civil Procedure 59(e) or 60(b) and sought to reopen this case. (ECF No. 16.) In  
5 the motion, Plaintiff asserts that he relied on various jailhouse lawyers throughout this  
6 action. (*Id.* at 4.) However, some of the inmates who helped Plaintiff moved to different  
7 housing units. (*Id.*) Prison officials moved Plaintiff and his most recent assistant to  
8 different units. (*Id.*) Due to Covid-19, prison officials restricted contact between inmates.  
9 (*Id.*) After Plaintiff received this Court's October 28, 2021, order, prison officials  
10 quarantined Plaintiff's unit due to an active Covid-19 outbreak and later quarantined  
11 Plaintiff's jailhouse assistant's unit. (*Id.*) As a result, Plaintiff could not consult with his  
12 assistant or exchange papers. (*Id.*) Plaintiff believes that Covid-19 is a highly unusual  
13 circumstance that satisfies Rule 60(b). (*Id.* at 5.)

14 **II. DISCUSSION**

15 Plaintiff in essence is asking this Court to set aside its judgment dismissing this  
16 action with prejudice pursuant to Federal Rule of Civil Procedure 60(b)(1). This rule  
17 provides that a court may relieve a party or its legal representative from a final judgment,  
18 order, or proceeding for "mistake, inadvertence, surprise, or excusable neglect." Fed. R.  
19 Civ. P. 60(b)(1).

20 In *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380 (1993),  
21 the Supreme Court interpreted "neglect" to encompass "both simple, faultless omissions  
22 to act and, more commonly, omissions caused by carelessness." *Id.* at 388. In assessing  
23 whether a set-side is justified by a party's excusable neglect, courts apply a four-part test:  
24 (1) the danger of prejudice to the opposing party; (2) the length of the delay and its  
25 potential impact on judicial proceedings; (3) the reason for the delay, including whether it  
26 was within the reasonable control of the movant; and (4) whether the movant acted in  
27 good faith. See *id.* at 395.

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1           **A. Prejudice to the Defendant**

2           To be prejudicial, the “standard is whether [Defendants’] ability to pursue [their  
3 defenses] will be hindered.” *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984). The delay  
4 must result in tangible harm such as loss of evidence, increased difficulties of discovery,  
5 or greater opportunity for fraud or collusion. See *TCI Grp. Life Ins. Plan v. Knoebber*, 244  
6 F.3d 691, 701 (9th Cir. 2001), overruled on other grounds by *Egelhoff v. Egelhoff ex rel.  
7 Breiner*, 532 U.S. 141 (2001). The loss of a quick victory does not constitute prejudice.  
8 See *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1225 (9th Cir. 2000).

9           This factor weighs in favor of setting aside judgment because Plaintiff has not  
10 identified a defendant in this case. As such, the Court cannot assess any potential  
11 prejudice to this unidentified defendant.

12           **B. Length of the Delay**

13           Next, the Court considers whether Plaintiff’s neglect caused significant delay and  
14 its impact on the proceedings. See *Pioneer*, 507 U.S. at 395.

15           The Court finds that this factor weighs against setting aside judgment. The Court  
16 started screening Plaintiff’s pleadings in August 2020 and has screened three of Plaintiff’s  
17 complaints. Additionally, the last two screening orders warned Plaintiff that he could not  
18 proceed solely against a Doe Defendant and told Plaintiff that he needed to amend to  
19 identify the name of the Doe Defendant in Count 1. (See ECF No. 10 at 8; ECF No. 12 at  
20 8-9.) Since June 2021, Plaintiff knew that his Doe Defendant was an issue. In October  
21 2021, Plaintiff appears to have ignored the Court when it granted specific leave for Plaintiff  
22 to discover the name of the Doe Defendant and file a Third Amended Complaint.

23           **C. Reason for the Delay**

24           When assessing the reason for the delay, the Supreme Court interprets  
25 Congress’s intent as permitting courts “to accept late filings caused by inadvertence,  
26 mistake, or carelessness, as well as by intervening circumstances beyond the party’s  
27 control.” *Pioneer*, 507 U.S. at 388. Delays in filing resulting from “negligence and  
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1 carelessness," not "deviousness or willfulness," may be considered excusable neglect.  
2 *Bateman*, 231 F.3d at 1225.

3 The Court finds that Plaintiff has not demonstrated excusable neglect. Although  
4 Plaintiff's unit and his inmate helper's unit may have been quarantined for Covid that does  
5 not explain the non-responsiveness for over 90 days. Plaintiff did not request an extension  
6 of time or keep this Court notified of why he might need an extension. Instead, Plaintiff  
7 filed a motion for reconsideration after the Court dismissed the case. In other words, it  
8 appears that Plaintiff may have forgotten about his case until he received a dismissal  
9 order. "Litigation is not a light switch that a party can turn off and on at his convenience."  
10 *Turner v. Nevada Dep't of Corr.*, Case No. 2:13-cv-01740-JAD-VCF, 2016 WL 4203818,  
11 at \*4 (D. Nev. Aug. 8, 2016), *aff'd sub nom. Turner v. High Desert State Prison*, 695 F.  
12 App'x 336 (9th Cir. 2017).

13 **D. Bad Faith**

14 For the last factor, the Court examines whether Plaintiff acted in bad faith when he  
15 failed to respond to the Court's order and meet its deadline. While the Court cannot say  
16 he acted in bad faith, the Court is also not persuaded that Plaintiff acted in good faith  
17 when he failed to meet the Court's deadline. As explained above, Plaintiff ignored the  
18 Court's order granting him 90 days to discover the identity of the Doe Defendant and to  
19 file a Third Amended Complaint. Additionally, Plaintiff seems to suggest that he did  
20 nothing with this case for 90 days and did not even attempt to discover the identity of the  
21 Doe Defendant.

22 After considering all four of the *Pioneer* factors, the Court finds that the factors  
23 weigh against setting aside judgment. The Court denies the motion for reconsideration  
24 (ECF No. 16) but grants some relief, as discussed below.

25 **E. Rule 60(b)(6)**

26 Although the *Pioneer* factors weigh against setting aside judgment, the Court finds  
27 that some relief is warranted under Federal Rule of Civil Procedure 60(b)(6). The rule  
28 provides that the court may relieve a party or its legal representative from a final judgment,

1 order, or proceeding for any other reason that justifies relief. See Fed. R. Civ. P. 60(b)(6).  
2 When deciding whether to dismiss an action for a plaintiff's failure to prosecute, the Ninth  
3 Circuit has directed the courts to weigh: "(1) the public's interest in expeditious resolution  
4 of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the  
5 defendants; (4) the public policy favoring disposition of cases on their merits and (5) the  
6 availability of less drastic sanctions." *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).  
7 In weighing these factors, the Court continues to find that dismissal of Plaintiff's case is  
8 warranted. However, the Court finds that the less drastic sanction of a without-prejudice  
9 dismissal is more appropriate considering Plaintiff's recent disclosures.

10 **III. CONCLUSION**

11 It is therefore ordered that the motion for reconsideration (ECF No. 16) is denied  
12 in part and granted in part.

13 It is further ordered that the portion of the order dismissing Plaintiff's case with  
14 prejudice (ECF No. 14 at 3, lines 5-6) is struck and revised to dismiss Plaintiff's case  
15 without prejudice. The Clerk of the Court is directed to amend the judgment (ECF No. 15)  
16 to reflect a dismissal without prejudice.

17 It is further ordered that this case is dismissed without prejudice to Plaintiff's right  
18 to reassert his claims in another case because this case is closed. If Plaintiff wishes to  
19 pursue his claims, he must file a new lawsuit. No further motions will be considered in this  
20 closed case.

21 DATED THIS 5<sup>th</sup> Day of April 2022.



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23 MIRANDA M. DU  
24 CHIEF UNITED STATES DISTRICT JUDGE  
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